

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JERRY SELLERS,
Plaintiff-Appellant,

v.

No. 96-6640

R. J. ALLEN, Officer,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Albert V. Bryan, Jr., Senior District Judge.
(CA-96-431)

Submitted: June 20, 1996

Decided: July 8, 1996

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Jerry Sellers, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Appellant appeals from the district court order dismissing his 42 U.S.C. § 1983 (1988) action for failure to exhaust state court remedies in accordance with Hamlin v. Warren, 664 F.2d 29 (4th Cir. 1981), cert. denied, 455 U.S. 911 (1982). We vacate and remand.

Appellant contends that the Defendant officer lacked probable cause to arrest him for trespass. He therefore seeks damages under section 1983. As the district court noted in its opinion, a section 1983 claim which calls into question the validity of a state court proceeding or impacts on the duration or validity of a sentence is subject to the exhaustion requirement. Appellant was arrested for trespassing. Appellant asserts in his complaint however, that the trespassing charges were dropped and the case never proceeded to trial. Accordingly, a decision regarding the existence of probable cause would not impact the concerns expressed in Hamlin and exhaustion is therefore unnecessary. We therefore vacate the district court's opinion and remand the case for further proceedings. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED